

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

MICHAEL WILSON, SR., et al.,

Plaintiffs,

vs.

Civ. No. 11-658 KG/SCY
Consolidated with
Civ. No. 11-951 KG/SCY
Civ. No. 11-1021 KG/SCY

DEPUTY LAWRENCE MONTANO, et al.,

Defendants.

ORDER GRANTING MOTION TO RECONSIDER, ALTER OR AMEND

This matter comes before the Court upon Plaintiff Jesse Ortiz's Rule 59(e) Motion to Reconsider, Alter or Amend the Court's Memorandum Opinion and Order [Doc 99] Granting Defendant Mike Chavez's Motion to Dismiss [Doc 44] (Motion to Reconsider), filed on February 2, 2015. (Doc. 103). Defendants Martin Benavidez and Mike Chavez (collectively, the Belen Defendants) filed a response on February 13, 2015, and Plaintiff Ortiz filed a reply on February 23, 2015. (Docs. 106 and 107). Having reviewed the Motion to Reconsider and the accompanying briefs, the Court grants the Motion to Reconsider and sets a new supplemental briefing schedule.

On November 4, 2014, the Court entered a Memorandum Opinion and Order Adopting Proposed Findings and Recommended Disposition (first Memorandum Opinion and Order). (Doc. 98). In that first Memorandum Opinion and Order, the Court deferred ruling on Defendant Mike Chavez' assertion of qualified immunity in order to allow Plaintiff Ortiz "until December 12, 2014, to depose Defendant Mike Chavez on the limited subject of his mental state in regards to Plaintiff's unconstitutional detention." *Id.* at 9. Once Plaintiff Ortiz completed Defendant

Mike Chavez's deposition, the Court permitted Defendant Mike Chavez two weeks to file supplemental briefing on the issue of Defendant Mike Chavez's mental state, and allowed Plaintiff Ortiz a week to file a response to that supplemental briefing. *Id.*

On January 23, 2015, the Court entered a second Memorandum Opinion and Order in which it determined that Defendant Mike Chavez was entitled to qualified immunity on the unconstitutional detention claim brought against him in his individual capacity. The Court reached this determination because no supplemental briefing on the issue of Defendant Mike Chavez's mental state had been filed despite the December 12, 2014, deadline to complete the deposition of Defendant Mike Chavez. The Court then entered summary judgment in favor of Defendant Mike Chavez on the unconstitutional detention claim and dismissed that claim with prejudice. (Doc. 100).

In his Motion to Reconsider, Plaintiff Ortiz explains that although he deposed Defendant Mike Chavez on December 8, 2014, as required by the first Memorandum Opinion and Order, the deposition was not "completed" until January 14, 2015, when Defendant Mike Chavez returned the deposition transcript to the court reporter with his signature and corrections. (Doc. 103-2). The parties agree that Defendant Mike Chavez, therefore, had until January 28, 2015, to file his supplemental brief. The Court, however, entered its second Memorandum Opinion and Order before Defendant Mike Chavez's January 28, 2015, deadline for filing a supplemental brief.


Plaintiff Ortiz now moves the Court to alter and amend its judgment dismissing the unconstitutional detention claim against Defendant Mike Chavez, or in the alternative, to vacate the second Memorandum Opinion and Order and set a new briefing schedule on the mental state issue. (Doc. 103) at 9. The Belen Defendants ask the Court to deny the Motion to Reconsider,

but if the Court grants the Motion to Reconsider, the Belen Defendants also ask that the Court set a new briefing schedule on the mental state issue. (Doc. 106) at 1 n.1.

Although the parties address the merits of the mental state issue in their briefs, the parties also seek a new briefing schedule on that issue should they fail to convince the Court to accept their respective positions on the mental state issue. Because of the confusion surrounding the timing of the supplemental briefing schedule and to allow the parties a full and fair opportunity to address the mental state issue, the Court will (1) vacate the second Memorandum Opinion and Order, (2) vacate the summary judgment in favor of Defendant Mike Chavez, and (3) set a new supplemental briefing schedule.

IT IS ORDERED that

1. the Rule 59(e) Motion to Reconsider, Alter or Amend the Court's Memorandum Opinion and Order [Doc 99] Granting Defendant Mike Chavez's Motion to Dismiss [Doc 44], (Doc. 103), is granted;
2. the second Memorandum Opinion and Order (Doc. 99) is vacated;
3. the Summary Judgment Regarding Defendant Mike Chavez (Doc. 100) is vacated;
4. no later than May 18, 2015, Defendant Mike Chavez may file a supplemental brief on the issue of whether he had the requisite mental state to be liable for Plaintiff Ortiz's injuries;
5. no later than May 29, 2015, Plaintiff Ortiz may file a response to Defendant Mike Chavez's supplemental brief; and
6. no later than June 8, 2015, Defendant Mike Chavez may file a reply.



UNITED STATES DISTRICT JUDGE